

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

United States of America,)	
)	
Plaintiff,)	
)	Criminal No.: 2:98-575-1
vs.)	
)	
Gary Mark Van Winkle,)	ORDER
)	
Defendant.)	
_____)	

On February 24, 2005, the defendant filed a motion requesting the Court to reconsider the defendant's sentence. This matter is now before the Court for disposition.

The defendant seeks to have a sentencing enhancement eliminated from his sentence in light of the Supreme Court's recent decision in United States v. Booker, 125 S. Ct. 738 (2005). The Supreme Court, however, clearly stated that its holding in Booker must be applied "to all cases on direct review." Id. at 25.

Subsequent to the decision in Booker, the Seventh Circuit ruled that Booker does not apply retroactively to criminal cases that became final before its release on January 12, 2005. See McReynolds v. United States, 397 F.3d 479 (7th Cir. 2005). Here, the defendant's case has run its course and his conviction and sentence became final in 1999, well before Booker was issued, and its approach therefore does not apply here.

The Court therefore denies the defendant's motion to reconsider his sentence.

AND IT IS SO ORDERED.



C. WESTON HOUCK

UNITED STATES DISTRICT JUDGE

May 24, 2005
Charleston, South Carolina